UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

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THOMAS E. CASEY, : CASE NO. 5:08-CV-2694

Petitioner,

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vs. : ORDER & OPINION

[Resolving Doc. Nos. <u>21</u>, <u>23</u>.]

RICHARD HALL, Warden,

:

Respondent.

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## JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On November 14, 2008, Petitioner Thomas E. Casey filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus, seeking federal review of his state conviction and sentence. [Doc. 1.] The Court referred the case to Magistrate Judge Kenneth S. McHargh for preparation of a Report and Recommendation pursuant to Local Rule 72.2. [Doc. 3.] On July 29, 2009, Petitioner Casey filed a motion to compel the Respondent to provide the Court with a copy of the sentencing order from his July 2009 re-sentencing. [Doc. 21.] On September 16, 2009, Petitioner Casey filed a motion to dismiss this case without prejudice. [Doc. 23.] The Respondent opposes both motions. [Doc. 22, 24.] Casey has replied. [Doc. 25.]

On February 25, 2010, Magistrate Judge McHargh issued his report and recommendation, recommending that the Court grant the Petitioner's motion to dismiss without prejudice and deny the Petitioner's motion to compel. [Doc. 26.] Neither party has filed an objection to the Magistrate

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Judge's report and recommendation.

The Federal Magistrates Act requires a district court to conduct de novo review only of those

portions of a report and recommendation to which the parties have made an objection. 28 U.S.C.

§ 636(b)(1)(C). Parties must file any objections to a report and recommendation within fourteen

days of service. *Id.* Failure to object within this time waives a party's right to appeal the magistrate

judge's recommendation. Fed. R. Civ. P. 72(a); see also Thomas v. Arn, 474 U.S. 140, 145 (1985);

United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).

Absent objection, a district court may adopt the magistrate judge's report without review.

See <u>Thomas</u>, 474 U.S. at 149. Moreover, having conducted its own review of the this case, the

Court agrees with the conclusions of Magistrate Judge McHargh.

The Court therefore ADOPTS the report and recommendation of the Magistrate Judge,

**GRANTS** the Petitioner's motion to dismiss the case without prejudice [Doc. 23], and **DENIES** 

the Petitioner's motion to compel the Warden to produce the new sentencing order [Doc. 21].

IT IS SO ORDERED.

Dated: March 17, 2010

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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